

## **PATTERN OF VIOLATIONS PROCEDURES SUMMARY**

At least once each year, the Office of Assessments will conduct a pre-screening of each operation under MSHA's jurisdiction to identify those that are exhibiting a potential Pattern of Violations. The Office of Assessments will document the criteria and data used to conduct the pre-screening.

The Office of Assessments will by memorandum transmit the list of mining operations identified as exhibiting a potential Pattern of Violations, along with the criteria and data used, to the Administrators for Coal and Metal and Nonmetal Mine Safety and Health. The Assistant Secretary, Deputy Assistant Secretaries, and Associate Solicitor for Mine Safety and Health will be copied in on the memorandum.

The memorandum will include the report containing all potential candidates, the data used to generate the screening and the number and percentage, by standard, of repeat violations that became final orders of the Commission during the review period.

The Administrators will issue memorandums to each District Manager with instructions for reviewing the identified operations and responding back to them within seven days identifying 1) the operations to which they will issue a notification of a potential Pattern of Violations and/or 2) the operations that they recommend not be issued a notification.

The District Manager must provide a detailed justification when recommending that any mining operation be removed from further consideration. Information of which only local enforcement personnel would be aware, such as management changes and mitigating circumstances beyond the control of the operator can, and should, be considered in making these determinations.

The District Managers shall issue a written notification of potential Pattern of Violations to each identified operator. A copy of the

notification shall also be provided to the representative of the miners at the operation, if applicable. The notification shall specify the basis for identifying the operation as having a potential Pattern of Violations and give the operator a reasonable opportunity, not to exceed 20 days from the date of the notification, to take the following steps:

1. Review all documents upon which the pattern of violations evaluation is based and provide additional information.
2. Submit a written request for a conference with the District Manager (the District Manager shall hold any conference within 10 days of a request).
3. Provide a written plan to institute a program to avoid repeated significant and substantial violations at the operation.

After the mine operator implements a corrective action plan, MSHA will conduct a complete inspection of the operation. This inspection may also be counted as one of the required annual inspections for that operation. The District Manager will analyze the results of this complete inspection and other on-site enforcement activities during the corrective action period to evaluate whether the mine operator has:

- reduced the violation frequency rate for both S&S and elevated enforcement violations by 30%.<sup>1</sup>

**Or**

- achieved a violation frequency rate for both S&S and elevated enforcement violations at or below the industry average for this mine type and classification during the 90 day review period.

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<sup>1</sup> The 30% reduction is calculated from the baseline of the number of S&S and elevated enforcement citations/orders issued per 100 inspection hours during the 24-month baseline period.

Mines that are at or below the national average for both of these rates, or achieve a 30% reduction in both of these rates, will not be further considered at this time for a pattern of violations notice.

The District Manager should also evaluate whether other circumstances affected the operator's implementation of the plan and whether there are any other factors that should be taken into account before a pattern of violations notice is issued.

The District Manager will submit an evaluation report to the appropriate Administrator and the Director of Assessments no more than 120 days from the potential pattern notification to the operator.

In cases where no program to reduce S&S violations has been implemented at the operation, the report of the evaluation shall be sent to the Administrator and the Director of Assessments no more than 60 days from the potential pattern notification to the operator and miners representative.

In both cases, a copy of the report shall be provided to the operator and representative of the miners 10 days before the report is sent to the Administrator and the Director of Assessments. Both the operator and miners representative, where applicable, will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of a report from the District Manager to the Administrator, the Administrator will issue a decision as to whether the operation is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to the Assistant Secretary, Deputy Assistant Secretaries, Director of Assessments, the operator, the representative of the miners if applicable, the District Manager and the Associate Solicitor for Mine Safety and Health.

When the Administrator decides to issue a Notice of Pattern of Violations, the District Manager will send, by certified mail or hand delivery, the Notice of Pattern of Violations to the operator. A copy

of the notice will also be provided to the representative of miners when applicable, the Assistant Secretary, Deputy Assistant Secretaries, Director of Assessments, the Administrator, and the Associate Solicitor for Mine Safety and Health.

Following notification to the operator of the issuance of a Notice of Pattern of Violations, the District Manager should initiate appropriate inspection activities to ensure that the operation is inspected in its entirety during the following 90-day timeframe and each succeeding 90 day period until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an **order** requiring the operator to withdraw all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

#### **TERMINATION OF PATTERN OF VIOLATIONS NOTICE**

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations or withdrawal orders pursuant to Section 104 (e) (1) of the Act within 90 days of the issuance of the pattern notice.

The operator may request an inspection of the entire operation or portions of the operation. No advance notice of the inspection shall be provided and the scope of each inspection will be determined by MSHA. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.